

§ 14-10-111. Declaration of invalidity

(1) The district court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(a) A party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances.

(b) A party lacked the physical capacity to consummate the marriage by sexual intercourse, and the other party did not at the time the marriage was solemnized know of the incapacity.

(c) A party was under the age as provided by law and did not have the consent of his parents or guardian or judicial approval as provided by law.

(d) One party entered into the marriage in reliance upon a fraudulent act or representation of the other party, which fraudulent act or representation goes to the essence of the marriage.

(e) One or both parties entered into the marriage under duress exercised by the other party or a third party, whether or not such other party knew of such exercise of duress.

(f) One or both parties entered into the marriage as a jest or dare.

(g) The marriage is prohibited by law, including the following:

(I) A marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(II) A marriage between an ancestor and a descendant or between a brother and a sister, whether the relationship is by the half or the whole blood;

(III) A marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood, except as to marriages permitted by the established customs of aboriginal cultures;

(IV) A marriage which was void by the law of the place where such marriage was contracted.

(2) A declaration of invalidity under subsection (1) of this section may be sought by any of the following persons and shall be commenced within the times specified, but in no event may a declaration of invalidity be sought

after the death of either party to the marriage, except as provided in subsection (3) of this section:

(a) For the reasons set forth in either subsection (1)(a), (1)(d), (1)(e), or (1)(f) of this section, by either party to the marriage who was aggrieved by the conditions or by the legal representative of the party who lacked capacity to consent no later than six months after the petitioner obtained knowledge of the described condition;

(b) For the reason set forth in subsection (1)(b) of this section, by either party no later than one year after the petitioner obtained knowledge of the described condition;

(c) For the reason set forth in subsection (1)(c) of this section, by the underage party, his parent, or his guardian, if such action for declaration of invalidity of marriage is commenced within twenty-four months of the date the marriage was entered into.

(3) A declaration of invalidity, for the reason set forth in subsection (1)(g) of this section, may be sought by either party; by the legal spouse in case of bigamous, polygamous, or incestuous marriages; by the appropriate state official; or by a child of either party at any time prior to the death of either party or prior to the final settlement of the estate of either party and the discharge of the personal representative, executor, or administrator of the estate or prior to six months after an estate is closed under section 15-12-1204, C.R.S.

(4) Repealed.

(5) Marriages declared invalid under this section shall be so declared as of the date of the marriage.

(6) The provisions of this article relating to the property rights of spouses, maintenance, and support of and the allocation of parental responsibilities with respect to the children on dissolution of marriage are applicable to decrees of invalidity of marriage.

(7) No decree shall be entered unless one of the parties has been domiciled in this state for thirty days next preceding the commencement of the proceeding or unless the marriage has been contracted in this state.

(Amended by 2018 Ch. 96, §8, eff. 8/8/2018. L. 71: R&RE, p. 523, § 1. C.R.S. 1963: § 46-1-11. L. 73: pp. 553, 1647, §§ 4, 5, 6. L. 80: (1)(g)(II) amended, p. 794, § 47, effective June 5. L. 98: (6) amended, p. 1397, § 38, effective February 1, 1999. L. 2018: (4) repealed, (SB 18-095), ch. 96, p. 754, § 8, effective August 8.)

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "Ten Years of Domestic Relations in Colorado -- 1940-1950", see 27 Dicta 399 (1950). For note, "The Presumption of Death and a Second Marriage", see 27 Dicta 414 (1950). For article, "A Decade of Colorado Law: Conflict of Laws, Security, Contracts and Equity", see 23 Rocky Mt. L. Rev. 247 (1951). For note, "Jurisdiction to Annul a Marriage Celebrated Without the Forum", see 26 Rocky Mt. L. Rev. 57 (1953). For article, "One Year Review of Domestic Relations", see 35 Dicta 36 (1958). For article, "Choice of the Applicable Law in Colorado", see 35 Dicta 162 (1958). For article, "One Year Review of Domestic Relations", see 39 Dicta 102 (1962). For article, "The Incestuous Marriage -- Relic of the Past", see 36 U. Colo. L. Rev. 473 (1964). For article, "Due Process in Involuntary Civil Commitment and Incompetency Adjudication Proceedings: Where Does Colorado Stand?", see 46 Den. L.J. 516 (1969). For article, "Marriage, Divorce, and Annulment When One Party is Arguably Incapacitated", see 43 Colo. Law. 39 (Feb. 2014).

Annotator's note. Since § 14-10-111 is similar to repealed § 46-3-1 et seq., CRS 53, and CSA, C. 56, §§ 33 through 38, relevant cases construing those provisions have been included in the annotations to this section.

There is a wide distinction between a conventional annulment proceeding and a conventional action for divorce. An annulment proceeding is one in which the validity of a marriage is challenged from its inception on the ground that one or both of the parties was underage, on the ground that one or both of the parties was married to another person, on the ground that the proceeding was attended by fraud, or on some other fairly comparable ground. An action for divorce is one in which termination is sought of a valid marriage. *Gainey v. Fleming*, 279 F.2d 56 (10th Cir. 1960).

For the effect of an invalidity of marriage determination on maintenance payments which were terminated upon remarriage, see *Torgan v. Torgan*, 159 Colo. 93, 410 P.2d 167 (1966).

Reestablishment of a support obligation following annulment of a subsequent marriage must be decided on a case-by-case basis, taking into account the facts and equities of the particular case. In *re Cargill and Rollins*, 843 P.2d 1335 (Colo. 1993).

The children of the deceased had no standing to challenge the validity of his marriage when it was not prohibited. *Matter of Estate of Fuller*, 862 P.2d 1037 (Colo. App. 1993).

Where wife fraudulently induced husband into marriage, an award of property and maintenance to the wife would be inequitable and unjust. Wife married husband to obtain a green card and left him immediately following receipt of her permanent green card. In re Joel, 2012 COA 128, 404 P.3d 1251.

Although subsection (6) states that the provisions of the Uniform Dissolution of Marriage Act (UDMA) relating to property, support, and allocation of parental responsibilities apply to invalidity actions, the purpose of that subsection is to protect innocent participants in meretricious relationships and the children of those relationships, not to reward the party perpetrating the void marriage. In re Joel, 2012 COA 128, 404 P.3d 1251.

In dividing property and awarding maintenance, the court's equitable powers require the court to award property and maintenance as the court deems equitable and just. An award to wife of a portion of husband's retirement account, to which husband was the sole contributor, would be inequitable in light of the wife's fraud. In re Joel, 2012 COA 128, 404 P.3d 1251.

The parties' car is properly valued as of the date of the decree of invalidity and not the date of permanent orders as wife contends. In re Joel, 2012 COA 128, 404 P.3d 1251.

Applied in In re Heinzman, 198 Colo. 36, 596 P.2d 61 (1979).

II. THE INVALIDITY OF MARRIAGE PROCEEDING.

Originally, authority to grant divorces and annul marriages in England was vested solely in the ecclesiastical courts. This authority terminated around 1870, during the reign of Victoria, at which time a special court was created to hear and decide all divorces and annulments of marriage, but ecclesiastical courts and their authority never became a part of American common law. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

An annulment action is a statutory proceeding in which the court exercises equity powers. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

The severance of marital ties, the entry of custodial orders regarding children, the application of equitable principles in divorce and annulment actions, and so forth, are or have aspects of the conventional activities of a court of equity. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

This article provides that in suits for annulment the practice and proceedings shall be in accordance with the rules of civil procedure. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

In the interplay of this section and the rules of civil procedure, there is no trial by jury of an annulment suit as a matter of right. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

A cursory reading of C.R.C.P. 38(a) makes obvious the conclusion that an annulment suit does not come within the meaning of any of the enumerated actions requiring trial by jury unless waived. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

But C.R.C.P. 39(c) provides that in actions not triable by a jury, the court may upon motion or of its own initiative try any issue with an advisory jury, or when statute provides for trial without a jury, the court with the consent of both parties may order a jury trial. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

Proof in an annulment case must be clear and convincing, and the court should so instruct the jury, and the preponderance rule is inapplicable. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

The giving of confusing and incompatible instructions in an annulment action is fatal error. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

III. MENTAL INCAPACITY TO CONSENT TO MARRIAGE.

Marriages are not easily annulled, and consequently, there must be clear and convincing proof that such party was mentally incompetent at the time the marriage was entered into. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

An instruction "that the husband would be incapable of giving voluntary consent if you find that at the time of the marriage ceremony he did not have sufficient mental capacity to understand the nature, obligations, and responsibilities of a marriage contract, and to appreciate the solemnity of the marriage vows" goes beyond the statutory ground for annulment which provides that if "one or both parties were mentally incapable of giving voluntary consent to the marriage", the marriage may be set aside. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

In an action for annulment of a marriage on the ground of mental incapacity, testimony of a witness to marriage ceremony that she observed

plaintiff before, during, and after ceremony, conversed with him, and that in her opinion he was mentally competent, was erroneously rejected, the credibility of such witness being for the jury. *Young v. Colo. Nat'l Bank*, 148 Colo. 104, 365 P.2d 701 (1961).

Testimony of a psychiatrist who based his opinion on the incompetency of plaintiff, and in part upon the testimony of another witness, was erroneously admitted. *Young v. Colo. Nat'l Bank*, 148 Colo. 104, 365 P.2d 701 (1961).

An order of adjudication of mental incompetency was properly admitted. *Young v. Colo. Nat'l Bank*, 148 Colo. 104, 365 P.2d 701 (1961).

Evidence of forgery of a blood test certificate was immaterial and inadmissible, as not tending to prove any of the alleged grounds of annulment. *Young v. Colo. Nat'l Bank*, 148 Colo. 104, 365 P.2d 701 (1961).

Evidence that wife had applied for driver's license and signed a delinquency tax statement in former name, subsequent to the alleged marriage, were remote circumstances having no legitimate bearing on the issues and should have been rejected. *Young v. Colo. Nat'l Bank*, 148 Colo. 104, 365 P.2d 701 (1961).

IV. LEGITIMACY OF CHILDREN.

A judgment and decree annulling the marriage of the parents does not determine the parentage of a child conceived prior to the marriage, and is not res judicata in a dependency proceeding to determine the paternity of the child. *Devereaux v. Devereaux*, 144 Colo. 31, 354 P.2d 1015 (1960).

The parentage of a child is not an issue in an annulment action between the parents. *Devereaux v. Devereaux*, 144 Colo. 31, 354 P.2d 1015 (1960).

Subsection (4) refers only to cases where an annulment proceeding is brought. *Valdez v. Shaw*, 100 Colo. 101, 66 P.2d 325 (1937); *Gainey v. Fleming*, 279 F.2d 56 (10th Cir. 1960).

V. CONFLICT OF LAWS.

Marriages being lawful in other states are recognized as lawful and valid in the state of Colorado. *Spencer v. People in Interest of Spencer*, 133 Colo. 196, 292 P.2d 971 (1956).

It is the public policy of this state concerning foreign marriages that such marriages are valid if valid where performed. *Spencer v. People in Interest of Spencer*, 133 Colo. 196, 292 P.2d 971 (1956).

In an action for annulment, the marriage is held to be valid or void, according to the statutes in force and effect in the jurisdiction where the same was entered into, and if, according to these statutes, it is found to be valid, it must be so considered in this jurisdiction. *Payne v. Payne*, 121 Colo. 212, 214 P.2d 495 (1950).

Annulment issued in a foreign jurisdiction does not prevent Colorado courts from entering orders as to property and maintenance. *In re Dickson*, 983 P.2d 44 (Colo. App. 1998).

(1) For the effect of a declaration of invalidity on marital agreements, see §14-2-308.

(2) For the legislative declaration in SB 18-095, see section 1 of chapter 96, Session Laws of Colorado 2018.